No. 06-__

IN THE

Supreme Court of the United States

MARYLAND RECLAMATION, INC.,
Petitioner,

v.

RAMBLEWOOD HOMEOWNER'S ASSOCIATION, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the Maryland Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

On November 17, 1992, the following provision was added to Section 27-406 of the Prince George's County Zoning Ordinance:

> (h) . . . that when approving a special exception for a rubble fill, the **District Council shall find that the proposed use is necessary to serve the projected growth of Prince George's County.**

Thereafter, on April 26, 2005, Section 27-406(h) of the Prince George's County Zoning Ordinance was further "clarified" when the District Council added the following provision:

> that when approving a special exception for a rubble fill, the District Council shall find that the proposed use is necessary to serve the projected growth of Prince George's County, **by applicant proof that without the proposed use the County's projected growth will be adversely affected. Proof of a future deficit in or absence of County-wide fill capacity does not by itself constitute proof that a proposed fill is necessary to serve the projected growth in the County.**

The question thus presented is: Whether section 27-406(h) of the Prince George's County Zoning Ordinance, which was enacted for the sole purpose of prohibiting citizens of other states from using rubble fill capacity in Prince George's County and restricting the use of rubble fill capacity in the County solely to citizens of Prince George's County, by conditioning approval of special exceptions for a rubble fill upon a determination that the proposed rubble fill is needed to serve the projected growth in Prince George's County, violates the Commerce Clause of Article I, section 8 of the United States Constitution?

Additionally, section 27-133 (f)(1) of the Prince George's County Zoning Ordinance establishes that the District Council "shall exercise original jurisdiction" in deciding whether

to approve a special exception for a rubble fill. Specifically, §27-132(f)(1) states:

> (f) Jurisdiction
>
> > (1) In deciding an appeal to the District Council, or Council election to review a decision made the Zoning Hearing Examiner or the Planning Board, Council shall exercise original jurisdiction.

In the instant matter, the District Council determined that petitioner's proposed rubble fill would cause adverse effects greater than would be anticipated at other locations in the R-R Zone prior to the evidence being presented during oral argument. As such the other question presented is whether the District Council violated the petitioner's Due Process Rights guaranteed them in the Fourteenth Amendment of the United States Constitution and Article 24 of the Maryland Declaration of Rights when the District Council decided that petitioner's proposed rubble fill would cause adverse effects greater than would be anticipated at other locations in the Rural Residential Zone prior to hearing the evidence in oral argument.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Maryland Reclamation, Inc., requests that a writ of certiorari issue to review the judgment of the Maryland Court of Appeals entered on December 15, 2006, in the case of *Maryland Reclamation, LLC v. Ramblewood Homeowner's Association, et al., Petition Docket No. 297, September Term, 2006, No. 812, September Term, 2005 Court of Special Appeals.* That judgment finally denied Maryland Reclamation's Petition for Judicial Review filed originally in the Circuit Court for Prince George's County, Maryland pursuant to Maryland Annotated Code. In said petition Maryland Reclamation, LLC asked the court to determine whether or not the requirement of § 27-406(h) of the Prince George's County Zoning Ordinance violated the interstate commerce clause of the United States Constitution by requiring the applicant to prove that the proposed "Sanitary Landfill"

(Rubble Fill) was necessary to accommodate the projected growth within the County and whether the Prince George's County Council, sitting as the District Council, (hereinafter District Council) violated the petitioner's due process rights by deciding the outcome of their zoning "special exception" application appeal prior to hearing oral arguments.

OPINIONS BELOW

The Maryland Court of Appeals has issued an Order in this case denying Maryland Reclamation's Petition for Writ for Certiorari, a copy of which appears in Appendix A to this petition at page 1. The Maryland Court of Appeals has also issued an Order in this case denying petitioner's Motion for Reconsideration of Denial of Petitioner for Writ of Certiorari, a copy of which appears in Appendix B to this petition at page 2. The Maryland Court of Special Appeals has issued an unreported opinion in this case, a copy of which appears in Appendix C to this petition at page 3. The Circuit Court for Prince George's County, Maryland has also issued an unreported opinion in this case, a copy of which appears in Appendix D to this petition at page 23. The Circuit Court for Prince George's County, Maryland has also issued an unreported Order of Remand in this case, a copy of which appears in Appendix E to this petition at page 28.

JURISDICTION

The Order of the Maryland Court of Appeals was entered on December 15, 2006. The Jurisdiction of this Court is invoked under 28 U.S.C.A. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

This case involves the Commerce Clause of Article I, section 8 of the United States Constitution. Such section reads in pertinent parts as follows:

> The Congress shall have Power To lay and collect Taxes, Duties, Imports and Exercise, to pay the Debts and pro-

> vide for the common Defence and general Welfare of the United States; but all Duties, Imports and Exercises shall be uniform throughout the United States;
>
> To borrow Money on the credit of the United States;
>
> To regulate Commerce with foreign Nations, and among the several States and with Indian Tribes; . . . .

This case also involves the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 24 of the Maryland Declaration of Rights. The Due Process Clause of the Fourteenth Amendment of the United States Constitution reads as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any within its jurisdiction the equal protection of the law.

Article 24 of the Maryland Declaration of Rights reads as follows:

> That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner, destroyed, or deprived of his life, liberty or property, but by judgment of his peers, or by the Law of the land.

It may also be found in Md. Code Ann. Const. Art. 24 (2003 Replacement Vol.).

STATEMENT

Petitioner, Maryland Reclamation LLC, is a limited liability company organized under the laws of the State of Maryland. Petitioner is also the owner of a 131.5324 acres site in

Prince George's County, Maryland (hereinafter the property). Respondent Ramblewood Homeowners Association is a corporation organized under the laws of the State of Maryland and represents a single family residential community within a one mile radius of Petitioner's property. Respondent Prince George's County Council, sitting as the District Council, is body corporate and politic and a charted municipal corporation under the Maryland Annotated Code Article 23A and 23B.

On or about April 4, 1999, Petitioner filed Special Exception Application 4347 (hereinafter SE. 4347) for permission to convert the approved active surface mining operation and Class III grading operation on the property into a rubble fill. The rubble fill application consisted of a west mound, 88.6 acres with a maximum elevation of 250 feet and an east mound, 42.9 acres with a maximum elevation of 160 feet. Moreover, it should also be noted that both of the aforementioned mound requested in the rubble fill application are the exact same dimensions as those previously approved for the Class III fill which is currently in operation.

On or about February 25, 2000, the Maryland National Park & Planning Commission issued its Technical Staff Report recommending approval of SE. 4347 with conditions. On July 20, 2000, the Planning Board finished the public hearing on SE.4347 and recommended approval with conditions. After eleven hearings beginning on January 31, 2001, and continuing through August 14, 2001, the Chief Zoning Hearing Examiner (hereinafter ZHE) for Prince George's County issued a decision approving SE. 4347 (for the west mound) with conditions. The petitioner and the respondent both filed Exceptions to the ZHE's decision.

On or about June 10, 2002, the Prince George's County Council, sitting as the District Council, (hereinafter District Council) without holding oral argument on the parties Exceptions decided to remand the case back to the

ZHE. On June 12, 2002, without having reviewed any testimony or exhibits on the application or hearing oral arguments thereon, the District Council issued an Order of Remand which stated in pertinent parts:

> **5. The record in this case demonstrates substantial adverse impacts to adjacent properties and the surrounding area, if a rubble fill is approved on the subject property.** (Emphasis added) This remand is ordered only because S.E. 4408, an application for a rubble fill expansion and extension on property less than a mile from the subject property, has been remanded to reexamine the necessity issue in light of the decision in CAL 01-21330. The necessity issue must be reviewed by the Examiner in both S.E. 4408 and S.E. 4347, before the District Council can decide them. (E.P1-P5)

Thereafter, the Technical Staff and the Appellee provided additional analyses of need and the ZHE held two additional hearings. On March 3, 2003, the parties submitted written closing arguments, the record was closed and the ZHE took the application under advisement. On May 1, 2003, the ZHE issued her decision on remand approving SE. 4347 (for the west mound) with conditions. Again, both parties filed Exceptions to the ZHE's decision. On or about September 22, 2003, the District Council heard oral argument on the Exceptions filed in SE. 4347 and denied Appellee's application for the following relevant reasons:

> 14. The District Council further concludes, as argued by opposition residents, particularly those in the Ramblewood and Robshire Acres communities, that the applicant did not prove, as is required by § 27-317 of the Zoning Ordinance, that the proposed rubble fill at this location will not cause adverse effects greater than would be anticipated at other locations in the R-R Zone. This proposed S.E. 4347 site is much closer to established residential subdivisions than other R-R sites, including the S.E 4408 site recently approved by the

District Council. Visual, noise, and odor effects from the rubble fill at the subject location will be much greater than would be anticipated at the S.E 4408 property and other R-R zone locations. This proof in the record offers an additional reason to deny the application.

15. Because the applicant did not prove that its proposed rubble fill facility is "necessary to serve the projected growth in Prince George's County," § 27-406 (h), and because the applicant did not show that anticipated adverse traffic, noise, odor, and visual effects at this location will be no worse than they would be at other R-R locations in the County, § 27-317, the application must be denied.

Thereafter, Maryland Reclamation filed a timely Petition for Judicial Review. On or about July 16, 2000, the Circuit Court heard oral argument on Respondents' Petition for Judicial Review. At the conclusion of the oral argument the Circuit Court took the case under advisement to issue a written decision. On or about July 21, 2004, the Circuit Court issued an Opinion and Order of the Court remanding the case back to "the District Council for it to explain its rationale for using what the court deemed to be an unwarranted interpretation of § 27-406(h) (the "necessity" requirement) of the Prince George's County Zoning Ordinance." On or about November 8, 2004, the respondent District Council readopted its Order of Denial dated September 25, 2003, and again denied Maryland Reclamation's Special Exception application.

Subsequently, on or about July April 29, 2005, the Circuit Court for Prince George's County again heard oral argument on this matter and took the case under advisement. On or about May 3, 2005, the Circuit Court issued and Opinion and Order remanding the case back to the District Council for further proceedings "to consider whether the applicant's proposed rubble fill will alleviate some of the County's projected need" for rubble fill capacity. Thereafter, on or about June 1,

2005, and June 10, 2005, the Respondents filed timely Notices of Appeal.

On February 9, 2006, the Court of Special Appeals held oral argument and took the case under advisement. On June 22, 2006, the Court of Special Appeals issued an unreported opinion holding "that there was sufficient facts with respect to disproportionately adverse effects, and that there was substantial evidence to support those findings." On July 24, 2006, the Court of Special Appeals issued its Mandate.

On August 8, 2006, the Petitioner filed a timely Petition for Writ of Certiorari to the Maryland Court of Appeals. On October 18, 2006, the Maryland Court of Appeals issued an Order denying the petition. On November 17, 2006, the petitioner filed a timely Motion for Reconsideration of the Order Deny Certiorari. On December 15, 2006, the Court of Appeals issued an Order denying the petitioner's Motion for Reconsideration.

REASONS FOR GRANTING THE WRIT

This case concerns the rights of Maryland Reclamation LLC to own and operate a rubble fill in Prince George's County, Maryland that is able to receive rubble from the entire Baltimore-Washington Metropolitan region without a protective local ordinance established to reserve rubble fill capacity for in-County rubble. The illegal and unconstitutional motives for the necessity provision in § 27-406 of the Prince George's County Zoning Ordinance is clearly demonstrated in the legislative history of the amendment. This zoning legislation added subsections (g) and (h), at the end of § 27-406. The "agenda item summary" for Council Bill 85-1992, approved by the District Council on November 17, 1992 states the following as the reason for the bill:

> There are certain special exception uses, including gas stations and planned retirement communities, for which a finding of need within a particular service area must be

> made. This legislation requires a similar finding for the approval of rubble fills. Specifically, an analysis must be included in the Technical Staff Report, and the District Council must use this information to determine whether the proposed use is necessary to serve the needs of Prince George's County. Appendix F, pg 34(a) (emphasis added).

The report of the Council's Planning, Zoning and Economic Development Committee, on the first page of the agenda item summary, gives the reason for the legislation and the committee's favorable (5-0) vote as:

> Staff explained that this legislation is intended to ensure that the rubble fills approved in Prince George's County are necessary to serve the needs of this County, and not the needs of the entire region. The sponsor [of the legislation, Kirk Wineland] added that since Federal law prohibits the county from restricting the use of privately-owned rubble fills, requiring a needs analysis prior to special exception approval will help preserve this resource and protect the citizens of the County. Appendix F; pg 34(a) (emphasis added).

Thus, it is clear that CB-85-1992 was enacted for the sole purpose of preserving rubble fill space for the needs of Prince George's County, "not the needs of the entire region."

Section 27-406 of the Prince George's County Zoning Ordinance deprives individuals in Washington D.C., Northern Virginia and other counties in Maryland of available rubble fill capacity and rubble fill applicants, like the Petitioner, are deprived of a right to offer their needed service to out-of-state rubble fill users until such time that a need for rubble in Prince George's County arises. Discrimination against rubble from Washington D.C., Northern Virginia and other counties in Maryland with reference to the needs analysis, in favor of Prince George's County rubble is per se invalid, except in a narrow category of cases (none of which apply to the instant matter) in which the municipality can demonstrate under

strict scrutiny, that it has no other means to advance a legitimate local interest. *Maine v. Taylor*, 477 U.S. 131, 91 L. Ed. 2d 110, 106 S. Ct. 2440 (1986) (upholding Maine's ban on the import of non-indigenous fish, which was causing the spread of parasites and the adulteration of its native fish population).

Moreover, banning of out-of-county rubble in the determination of need required by § 27-406 of the Prince George's County Zoning Ordinance implicates the Commerce Clause. This Court in *C&A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 389-90; 114 S. Ct. 1677, 128 L. Ed. 399 (1994), explained that:

> as solid waste output continue to apace and land fill capacity becomes more costly and scarce, state and local governments are expending significant resources to develop trash control systems that are efficient, lawful and protective of the environment. The difficulty of their task is evident from the number of recent cases that we have heard involving waste transfer and treatment. . . The case decided today, while perhaps a small new chapter in that course of decisions, rests nevertheless upon well-settled principles of our Commerce Clause jurisprudence. (citations omitted)

The Commerce Clause, U.S. Const. art. I § 8, c1.3, gives Congress exclusive power over interstate commerce. It is well settled that actions are within the domain of the Commerce Clause if they burden interstate commerce or impede its free flow. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1., 31, 81 L. Ed. 893, 57 S.Ct. 615 (1937). The Commerce Clause has also been interpreted to invalidate local laws that impose commercial barriers or discriminate against an article of commerce by reason of its origin or destination out of state. *City of Philadelphia v. New Jersey*, 437 U.S. 617; 98 S. Ct. 2531; 57 L. Ed. 475 (1978) (striking down a New Jersey statue that prohibited the import of solid waste); *Hughes v. Oklahoma*,

441 U.S. 322, 60 L. Ed. 2d. 250, 99 S. Ct. 1727 (1979) (striking down Oklahoma law that prohibited the export of natural minnows). As such, in the case sub judice there should be no doubt that since § 27-406 only focuses on in-county rubble and excludes from the analysis other rubble that could potentially be brought in from surrounding jurisdictions, the constitutional protection of the Commerce Clause is available. *Philadelphia, infra*; *Bowman v. Chicago & Northwest R. Co.*, 125 U.S. 465.

In determining whether to grant Certiorari to address the Prince George's County needs provision, this Court's decision in *C&A Carbone, Inc., v. Town of Clarkstown*, 511 U.S. 383, 389-90; 114 S. Ct. 1677, 128 L. Ed. 399 (1994) may be is helpful. In *Carbone*, the Town of Clarktown adopted a trash flow control ordinance requiring all non-hazardous solid waste within the town to be deposited a one specific transfer station prior to export. The purpose and effect of the ordinance was to allow the owner of the transfer station to charge a tipping fee on all trash which originated in the town. After learning that recyclers in the town were not complying with the ordinance the town filed suit in state court. The case eventually made its way to the United States Supreme Court which explained that in determining the validity and constitutionality of local laws which infringe upon the Commerce Clause, case law has produced two lines of cases: "first, whether the ordinance discriminates against interstate commerce, Philadelphia, 437 U.S. at 624; and second, whether the ordinance imposes a burden on interstate commerce that is 'clearly excessive in relation to the putative local benefits,' *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142, 25 L. Ed. 2d 174, 90 S. Ct. 844 (1970). Moreover, if the reviewing court finds that the ordinance discriminates against interstate commerce, there is no need to apply the *Pike* test.

In the instant matter, Section 27-406 (g) and (h) of the Prince George's County Zoning Ordinance are illegal and un-

constitutional infringements on interstate commerce. Specifically, § 27-406 requires approval of a rubble fill application only upon a showing that there exist an actual deficit of rubble capacity needed for Prince George's County rubble. The Petitioner should not be denied his right to provide available rubble capacity to the entire Baltimore-Washington area until there is a need for said capacity for Prince George's County. Additionally, public service projects like the construction of the new Wilson Bridge should not be hampered by a lack of available rubble fill capacity so that the Prince George's County Council can conserve rubble capacity on privately owned property for a public use. Stated differently, the problem with 27-406 is that it hoards local resources, (i.e. available rubble fill capacity) for the benefit of local residents and businesses. Section 27-406 is just the type of local processing requirement that the United States Supreme Court has long held invalid. *See Minnesota v. Barber*, 136 U.S. 313, 34 L. Ed. 455, 10. S. Ct. 862 (1890) (striking down a Minnesota statute that required any meat sold within the state, to be examined by a state inspector.), *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142, 25 L. Ed. 2d 174, 90 S. Ct. 844 (1970) (striking down an Arizona statute that required all Arizona-grown cantaloupes to be packed in state prior to exporting).

This case also concerns the rights of Maryland Reclamation LLC to a fair hearing under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 24 of the Maryland Declaration of Rights. Specifically, the District Council violated the petitioner's Due Process Rights when it decided that petitioner's proposed rubble fill would cause adverse effects greater than would be anticipated at other locations in the Rural Residential Zone prior to hearing any testimony or any evidence being enter into the record.

Section 27-133 (f)(1) of the Prince George's County Zoning Ordinance establishes that the County Council "shall

exercise original jurisdiction" in deciding whether to approve Petitioner's special exception for a rubble fill. Specifically, §27-132(f)(1) states:

> (f) Jurisdiction
>
> > (1) In deciding an appeal to the District Council, or Council election to review a decision made by the Zoning Hearing Examiner or the Planning Board, Council shall exercise original jurisdiction.

Thus, there should be no doubt that the District Council's review of the Zoning Hearing Examiner's decision was de novo, and that the respondent District Council violated the Petitioner's due process right by stating in the Order of Remand prior to any evidence being placed in the record that "the record in this case demonstrates substantial adverse impacts to adjacent properties and the surrounding area, if a rubble fill is approved on the subject property. (Emphasis added)

Maryland law is clear that unless otherwise limited by statute or court rule, a "de novo hearing" of administrative decision by reviewing boards is an entirely new hearing at which time all aspects of the case should be heard anew as if no decision had been previously rendered. *Halle Cos. v. Crofton Civic Ass'n*, 339 Md 131, 661 A.2d 682 (1994); *Boehm v. Anne Arundel County*, 54 Md. App. 497, 459 A.2d 590 (1983). Moreover, as the Boehm Court stated, an excellent position, of what a *"de novo"* hearing embraces can be found in 2 Am. Jur.2d Administrative Law § 698 (1962). That section provides:

> *A trial or hearing "de novo" means hying the matter anew the same as if it had not been heard before and as if no decision had been previously rendered. Thus, it is said that where a statute provides that an appeal shall be heard de novo such a hearing is in no sense a review of the hearing previously held, but is a complete trial of the controversy, the same as if no previous hearing had*

ever been held, especially where the hearing is in a court of general, original juris-diction. Where a statute provides for a trial de novo and does not provide that the findings of the administrative agency shall be conclusive or of any force, the whole matter is opened up for consideration on appeal as if the proceeding had been originally brought in the reviewing court. Trial in court is not an appellate proceeding where the statute provides for a suit to set aside an award and for determination of the issues upon trial de novo. Even though designated an "appeal," a review in which the court is not confined to a mere re-examination of the case as heard before the administrative agency but hears the case de novo on the record before the agency and such further evidence as to be regarded as an original proceeding. Thus, on a trial or hearing de novo it has been held immaterial what errors or irregularities or invasion of constitutional rights took place in the initial proceedings.

A trial de novo or a de novo hearing of the matter under "review" may be new and different from the trial or hearing before the administrative agency in respect of one or more, or all, of the following: evidence heard or facts considered, especially where the administrative agency did not afford a hearing; issues raised; findings made; grounds for decision; and the view of the evidence heard or facts considered, the opinion as to the preponderance of the evidence, and the proper judgment to be reached or action to be taken in accordance with the evidence or facts as thus viewed. The last element would appear to be the essential element of a true trial or hearing de novo and may be embraced by general statements of a court that a trial de novo is involved.

Not all the foregoing elements of a trial or hearing de novo are necessarily made operative by the fact that new and additional evidence is admitted in court, at least in the view of some courts; and not all of the elements are made operative as to all types of situations by the fact that a statute expressly authorizes or requires a trial or

> hearing de novo. The scope of de novo review of the actions of administrative agencies, or the significance of a trial designated as a trial de novo in such case, may vary with the subject matter of the review of the function of the agency, and may be tested in the light of the nature and scope of the remedy through which such trial is made available and the proper distribution of governmental powers among the various branches of government under the Constitution. Thus, there may be a trial de novo upon the record as some statutes expressly provide, and a trial de novo in which the court must consider the record before the agency, accord a presumption of correctness or proper deference to the agency findings and conclusion, and a refrain, at least in matters other than judicial, from substituting its discretion or judgment for that of the administrative agency. (footnotes omitted) (emphasis supplied).

It is also well established in Maryland law that whether constitutional or statutory requirements or elements of fair play and impartiality have been violated in an administrative hearing should be decided on a case by case basis. *Hyson v. Montgomery County Council*, 242 Md. 55, 217 A.2d 578 (1966), In addressing due process within the context of administrative hearings, Professor Schwartz, in his treatise on Administrative Law, states:

> The literal meaning of due process is *fair procedure.*
>
> * * * *
>
> Before an agency takes action which adversely affects particular rights and obligations, those affected must be given notice and an opportunity to present their side of the case in a full and fair hearing. But more is required of agencies than minimal compliance with the "hear the other side" principle. When due process requires a hearing, it requires many of the elements of a "trial-type" hearing. Building upon the due process foundation, the courts have constructed an imposing edifice of formal

adjudicatory procedure. The consequence has been a virtual judicialization of the administrative process. Administrative procedure has acquired many of the attributes of courtroom procedure.

The rights required by due process before an administrative agency typically include the right to:

(1) Notice, including an adequate formulation of the subjects and issues involved in the case;

(2) Present evidence (both testimony and documents) and argument;

(3) Rebut adverse evidence, through cross-examination and other appropriate means;

(4) Appear with counsel

(5) **Have the decision based only upon evidence introduce into the record of the hearing;** (Emphasis added) and

(6) Have a complete record, which consists of a transcript of the testimony and arguments, together with the documentary evidence and all other papers filed in the proceeding. B. Schwartz, Administrative Law § 67 (1976)

In the instant matter, the Petitioner was entitled to a de novo appeal on the record and procedural due process required that Respondent District Council refrain from making a decision concerning the alleged cumulative adverse effects of the proposed special exception until such time that oral argument on the application was held. However, it is clear that the decision by the District Council to deny Petitioner's rubble fill application on September 22, 2003, was not based on any evidence introduced into the record of the hearing. A review of the Order of Remand from June 12, 2002, makes clear that the District Council had already decided to deny Petitioner's rubble fill application before it heard the first scintilla of evidence. Specifically, the District Council de-

cided and stated in the aforementioned Order of Remand almost 15 months earlier, and prior to having any evidence introduced in the record that **"THE RECORD IN THIS CASE DEMONSTRATES SUBSTANTIAL ADVERSE IMPACTS TO ADJACENT PROPERTIES AND THE SURROUNDING AREA, IF A RUBBLE FILL IS APPROVED ON THE SUBJECT PROPERTY."** (Emphasis added) Consequentially, there should be no doubt that the District Council decided this case prior to holding oral argument on September 22, 2003 and Petitioner's was denied its due process of law.

CONCLUSION

WHEREFORE, Petitioner requests that a writ of certiorari issue from this Honorable Court to review the judgment of the Court of Appeals of Maryland in the case *Maryland Reclamation, LLC v. Ramblewood Homeowner's Association, et al., Petition Docket No. 297, September Term, 2006, No. 812, September Term, 2005 Court of Special Appeals.* In the event that the petition is granted, petitioner requests that the judgment of the Maryland Court of Special Appeals be reversed, and that the cause be remanded, and that the court below be directed to approve the petitioner's application for a rubble fill.

Respectfully submitted,

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